



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Comspace Corporation--Request for Reconsideration
File: B-223714.3
Date: September 4, 1986

DIGEST

A protest that appeared to challenge a refusal by the Small Business Administration to issue a certificate of competency was properly dismissed since the General Accounting Office (GAO) generally does not review such determinations except in circumstances not present here. Protester's request for reconsideration, which indicates that protest was intended to raise issue considered by GAO, will not be granted where the issue is first clearly raised in the request for reconsideration and as such is untimely.

DECISION

Comspace Corporation requests reconsideration of our dismissal of its protest in connection with invitation for bids (IFB) No. FCEP-CV-60058-S-6-5 issued by the General Services Administration (GSA) for frequency measuring tapes. We deny the request.

By letter dated July 24, 1986, Comspace protested that the Small Business Administration (SBA) had advised the firm that its bid under the IFB had been "turned down." The letter stated that three of the four reasons SBA had cited for this action related to the performance by Comspace under a prior contract with GSA; the fourth concerned an alleged failure by Comspace to provide commitment letters. Comspace disputed the validity of all four reasons and complained that its competence had been questioned. Upon receipt of the protest, we contacted a representative of GSA who informed us that SBA had declined to issue Comspace a COC.

Under section (8)(b)(7) of the Small Business Act, 15 U.S.C. § 637(b)(7) (1982), SBA is authorized to determine conclusively the responsibility of a small business concern by issuing or refusing to issue a COC. Our Bid Protest Regulations provide that we will not review a determination by SBA with respect to a COC referral absent a showing of possible

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fraud or bad faith on the part of government officials. 4 C.F.R. § 21.3(f)(3) (1986). Our dismissal of the protest was based on this provision.

In requesting reconsideration, Comspace alleges that our basis for dismissal "was not a subject covered or included in [its] protest." Comspace has submitted a revised protest letter complaining that the contracting agency improperly denied the firm a contract and citing the same four reasons that Comspace previously said had been cited by SBA. As we understand the request for reconsideration, it appears Comspace is contending that it did not intend its letter of July 24 as a protest of SBA's refusal to issue a COC, but rather as a protest of the actions of the contracting agency, GSA.

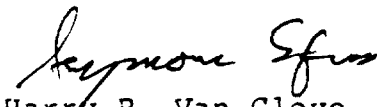
We find no reason to reconsider our previous dismissal of the protest. The original protest clearly indicated that SBA had found Comspace nonresponsible, and the contracting agency informed us that SBA had declined to issue a COC. Thus, even if Comspace had intended its letter to be a protest of the contracting agency's action, we would not have considered the matter since by law the agency's action was subject to a conclusive determination by SBA.

We now are advised, however, that the SBA did not conclusively rule on Comspace's responsibility, but simply declined to consider the question because Comspace apparently intended to furnish a foreign-made product and SBA considered Comspace to be ineligible for a COC under 13 C.F.R. § 125.5(a) (1986). Although it is our general practice to consider a protest of a nonresponsibility determination regarding a small business when the SBA declines to consider the firm because foreign products will be furnished, see Wallace & Wallace, Inc., et al.--Reconsideration, B-209859.2, et al. July 29, 1983, 83-2 CPD ¶ 142, we decline to do so here.

Protesters have an obligation to set forth clearly their grounds of protest and the factual and legal basis for their complaint. 4 C.F.R. § 21.1(b) (1986). Furthermore, they must do so within the time constraints of our timeliness rules at 4 C.F.R. § 21.2. We think the only reasonable interpretation of Comspace's July 24 protest is that (1) it is a small business; (2) it was found nonresponsible by GSA; and (3) a COC was denied by SBA. Nowhere in its protest did Comspace indicate that SBA did not rule on the

responsibility question; neither did it indicate that it intended to furnish a foreign product, a fact that would have led us to seek clarification of SBA's role in this case. Even in its reconsideration request, while it insists it is protesting only GSA's actions, Comspace makes in reference to why, in light of its small business status and SBA's apparent involvement in the matter, we should consider the matter. It is only because of the informal advice we received subsequent to our receipt of the request for reconsideration that we learned of SBA's actual role. Under these circumstances, and giving Comspace the benefit of the advice we have received, we must view Comspace's protest of GSA's actions as untimely. Obviously, Comspace was aware of its basis for protest at least as early as July 24; it did not clearly protest GSA's determination on a basis that we would consider until the August 11 filing date of its request for reconsideration. This filing does not comply with the 10-day filing requirement of 4 C.F.R. § 21.2(a)(2), and therefore is untimely. See Sermon, Inc.--Request for Reconsideration, B-219173.2, Oct. 28, 1985, 85-2 CPD ¶ 470.

The request for reconsideration is denied.

for 
Harry R. Van Cleve
General Counsel